IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

HABEAS CORPURS PETITION NO. 12 OF 2007

Fasiurrehman S/o Khalildurrehman R/o 656 Ka,
Mohalla Katoratal, Kashipur, Distt. U.S. Nagar

.....Petitioner

Versus

1. State of Uttarakhand through SSP, U.S. Nagar
2. Station House Officer, P.S. Kotwali, Kashipur, U.S. Nagar
3. Zarif Ahmad S/o Shabbir Ahmad R/o Vill. Dhakia, P.S. Sahjadnagar, Tehsil Sahbad, Distt.Rampur (UP)

.....Respondents

Dated: 24.09.2007

Sri S.K. Chaudhary, learned counsel for the petitioner
Sri Harish Pujari, learned Addl. G.A. for the State/Respondent Nos.1 to 2
Sri D.C. S. Rawat, learned counsel for Respondent No.3

Hon'ble Dharam Veer, J.

By means of this petition, the petitioner has prayed to issue writ of Habeas Corpus directing Respondent No.3 to produce the corpus of Smt. Smt. Nazma W/o Fasiurrehman, presently in the illegal detention and custody of Respondent No.3 at Vill. Dhakia, P.S. Sahjadnagar, Tehsil Sahbad Distt. Rampur (UP).

2. Briefly stated, facts of the case as stated by the petitioner is that Smt. Nazma was earlier married with Respondent No.3 and in the month of March, 2007, she gave divorce to Respondent No.3 and on 14.7.2007 i.e. after 3 months of divorce, she got married with the petitioner and after the marriage, both of them started to live together as husband and wife. It is also stated that on 29.7.2007 when Smt. Nazma was alone at home, then Respondent No.3 with some other accomplices took Smt. Nazma forcibly with him. Thereafter, the petitioner made several efforts to get her wife but all were in vain. Being aggrieved, the petitioner has filed the present habeas corpus petition before this Court.

3. A counter affidavit has been filed by Respondent No.3 in which it has been stated that petitioner is permanent resident of Kasba Naroli P.s. Baniyathar, Distt. Moradabad, UP and his real name is Rehman and he is having criminal history and at present he is in jail in connection with Case

Crime No.692 of 2007 u/s 3(i) of Gangster Act registered at P.S. Chandosi (UP). It is also stated that Smt. Nazma is her legally wedded wife and his marriage was solemnized with Smt. Nazma on 15.2.1998 and out of this wedlock, tow daughters were born i.e. Km. Muskan, aged about 8 years and Km. Layba aged about 3½ years. It has further been stated that wife of Respondent No.3 is suffering from Gyni Infection and she is under treatment of Yash Hospital and Subham Nursing Home at Moradabad which shows that Smt. Nazma was with him on 21.6.2007, 12.7.2007 and 23.7.2007 and she was medically examined by the doctors of said hospital. It has further been stated that wife of Respondents No.3-Smt. Nazma was missing from Shubham Nursing Home and he got lodged a missing report at P.S. Civil Lines, Moradabad and on 30.7.2007 she herself went to police station and gave her statement and on the same day, she was released by the Upper Nagar Magistrate II, Moradabad.

4. I have heard Sri S.K. Chaudhary, learned counsel for the petitioner, Sri Harish Pujari, learned Addl. G.A. for the State/Respondent Nos.1 to 2 and Sri D.C.S. Rawat, learned counsel for Respondent No.3.

5. On 11.09.2007, this Court directed Respondent No.3 to produce *Nazma* before the Court on 24.9.2007 and it was also directed that the petitioner shall also appear in person before the Court. In compliance of that order, Respondent No.3 is present in person along with Smt. Nazma before this Court today. However, the petitioner is not present.

6. This Court sent Smt. Nazma before the Additional Registrar of this Court for recording of her statement. Smt. Nazma has stated in her statement before the Additional Registrar of this Court which is as under:-

"नाम – नाजमा पत्नी जरीफ अहमद, उम्र – 25 साल, निवासी – ढकियॉ तहसील –शाहबाद जिला रामपुर उ0प्र0 ।

शपथ पूर्वक बयान किया किः–

1. मैं जरीफ अहमद की बीवी हूॅ। आने वाली 15 फरवरी को जरीफ अहमद के साथ मेरी शादी को हुये 10 साल हो जायेगें। मैं जरीफ अहमद के साथ ही रह रही

हूॅ । मैं अपनी सुखी से, अपनी मर्जी से जरीफ के साथ रह रही हूॅ। मै जरीफ के साथ ही रहूॅगी। मुझे किसी ओर से कोई मतलब नहीं है।

2. फशीउर रहमान के साथ मेरा निकाह कभी नही हुआ है। मै तो अपने शौहर जरीफ अहमद के साथ रह रही हूॅ। मैं बस इतना ही बोलना चाह रही हूॅ। मेरे दो लडकियॉ है। मुझ पर कोई जोर दबाव नहीं है। मै। अपनी गृहस्थी में जरीफ अहमद के साथ आराम से रह रही है।

3. फशीउर रहमान ने मेरी छोटी बेटी को उठा लिया था और चार सौ बीसी कर एक कागज पर मेरे साइन करा लिये थे। यह नहीं जानती थी कि किस कागज पर मेरे साइन कराये थे। मैं उर्दू पढना–लिखना नहीं जानती हूॅ। इससे आगे मैं कुछ नहीं कह सकती । इतना ही काफी है। फशीउर रहमान के साथ मेरा कोई निकाह नहीं हुआ। मेरा एक ही बार निकाह हुआ है। वह जरीफ अहमद के साथ ही हुआ है।

साक्षी को यह उपरोक्त बयान पढकर सुनाया गया। साक्षी ने इसे सही व सत्य होना स्वीकारा।''

7. Today, Sri Zarif Ahmad-Respondent No.3 and Smt. Nazma appeared in person before this Court. Learned counsel for respondent No.3 has also filed personal affidavits of Respondent No.3 and also of Smt. Nazma. Smt. Nazma has stated in her statement that she is the wife of Respondent No.3 and she is residing with her husband peacefully and she has denied that she had been married with the petitioner-Fasiurrehaman. It has also been stated that she wants to live with her husband Zarif Ahmad- Respondent No.3. It has further been stated that the marriage certificate (Nikah Nama) filed by the petitioner is forged one.

6. In view of the personal affidavit filed by Smt. Nazma and also from her statement recorded before Additional Registrar of this Court, it has become ample clear that she is not in the illegal custody of Respondent No.3 and she is living with Respondent No.3 peacefully and happily and without any fear and pressure of anybody. Hence, now there is no question to give Smt. Nazma in the custody of petitioner.

7. For the reasons recorded above, the habeas corpus petition is devoid of merit and is hereby dismissed.

(Dharam Veer, J.)

Rajeev Dang